IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10579 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAROLI TARGAM VIBHAG NIRA TALGOL GRAM UDHYOG SAHAKARI

Versus

DISTRICT REGISTRAR & MANAGER (K.V.C.I.)

Appearance:

1. Special Civil Application No. 10579 of 1999

MR BS PATEL WITH MS. ASHA TIWARI WITH

MRS RANJAN B PATEL for Petitioner No. 1

MS. MITA PANCHAL, AGP for Respondent No. 1

MR AS PANDYA for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 3-29

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 22/01/2004

ORAL JUDGEMENT

1. Maroli Targam Vibhag Nira Talgol has filed this petition on 28-12-1999 challenging the order dated 11-11-1999 passed by the District Registrar Cooperative Societies (Industries) Valsad whereby the Registrar held directed the petitioner society that all 28 (twenty eight) members who have applied to the petitioner society to be the members of the petitioner society.

2. The facts giving rise to to this petition are as under :

The petitioner society is a registered cooperative society under the provisions of the Gujarat Cooperative Societies Act, 1961. The main objection of the petitioner society is to run Nira Talgol Industries by scientific method to increase the sale of Nira and other ancillary business.

3. It appears that 34 members have filed the application u/s 24 of the said Act and Rule 12 of the Gujarat Co-operative Societies Rules, 1965. The petitioner society in it its meeting held on 29-9-1999 passed the resolution no. 6 and admitted 6 members. Three members out of said six members stated that they do not to become members and remaining three members denied membership on the ground of certain bye-laws of the petitioner society.

4. It appears that thereafter necessary proceedings were initiated before the District Registrar of Cooperative Societies and the District Registrar, Cooperative Societies has passed order on 11-11-1999 and directed the petitioner society to enrol 28 members as members of the petitioner society. Being aggrieved and dissatisfied with the said order dated 11-11-1999 passed by the District Registrar, Cooperative Societies, the petitioner society has filed the present petition before this Court on 28-12-1999.

5. Thereafter this Court (Coram : M.S. Shah, J.) on 3-8-2001 passed reasoned order. Ms. Asha Tiwari has appeared with Mr. B.S. Patel learned counsel for the petitioner. Ms. Mita Panchal, A.G.P. also appears on behalf of the State Government. She has drawn my attention to the affidavit filed by the Manager, KVCI on 19-3-2002 as well as other affidavit dated 18-12-2000.

6. Ms. Asha Tiwari appearing with Mr. B.S. Patel learned counsel for the petitioner has invited my attention to Section 24 of the said Act, which reads as under :

"Section 24 (1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act, the rules and bye-laws of such society.

(2) Where the society does not communicate any decision to a person within a period of three months from the date of receipt by the society of his application for admission, such person shall be deemed to have become the member of such society on the expiry of the aforesaid period of three months.

(3) Where a person is refused admission as a member of a society, the decision together with the reasons therefor shall be communicated in writing to such person by the society within three months from the date of receipt by the society of the application for admission made by such person."

7. Learned counsel for the petitioner further drawn my attention to Rule 12 of the said Rules, which reads as under :

"Open membership : (1) No Seva Sahakari Mandali or Consumers' Society or Co-operative Milk Producer's Society, shall without sufficient cause refuse admission to membership to any person duly qualified therefor under the provisions of the Act and the bye-laws.

(2) No co-operative housing society shall without sufficient cause, refuse admission to its membership to any person, duly qualified therefor under the provisions of the Act, and its bye-laws to whom an existing member of such society wants to sell or transfer his plot of land or house and no such society shall without sufficient cause, refuse to give permission to any existing member thereof to sell or transfer his plot of land or house to another person who is duly qualified as aforesaid to become its members.

Explain - A Seva Shahkari Mandali includes a multipurpose society and a primary agriculture credit society."

8. Learned counsel for the petitioner has also drawn my attention to the decision of the Division Bench of this Court in the case of Amreli District Co-operative Sale & Purchase Union Ltd. & Ors. Vs. State of Gujarat, reported in 1984 (2) G.L.R. 1244. The Division Bench of this Court in para 55 on page 1299 held that provisions contained in Section 22(2) and Sec.24(1) & (2) are bad in law and void inasmuch as they are violative of Article 19(1)(c) of the Constitution. Learned counsel for the petitioner submitted that in the above decision of the Division Bench the petitioner society had filed an appeal before the Hon'ble Suprme Court but ultimately it was withdrawn. Therefore, above decision of the Division Bench has become final.

9. Learned counsel for the petitioner has submitted that so far as Rule 12 of the said Rules is concerned, in the decision of the Division Bench of this Court in the case of Jain Merchants Coop. Housing Society Ltd. & Ors. V. H.U.F. of Manubhai Kalyanbhai Shah through its Manager Harishbhai Manubhai Shah & Ors, reported in 1995 (1) p.19 has upheld the validity of Rule 12 of the said Rules. Learned counsel for the petitioner submitted that on plain reading of Rule 12 of the said Rules. The petitioner society is not covered under Rule 12 of said Rules because the petitioner is not Seva Sahakari Mandali or Consumer Society or Cooperative Housing Society. She has further submitted that the remaining members have denied for membership of the petitioner society and therefore they themselves formed a trust under the provisions of the Bombay Public Trusts Act, 1950. The learned counsel for the petitioner has invited my attention to the applications exh. 1/1, 1/2, 1/3, exh.1/4 of Inquiry Case No.60 of 2001 as well as application for registration filed in Inquiry Case No.60 of 2001, filed before the Deputy/Assistant Charity Commissioner, Valsad and submitted that view of the said applications, it appears that the said members have formed a trust and applied for licence before the authority concerned and ultimately they have obtained the licence for carrying on the business in respect of Nira and Talgol etc.

10. In view of the aforesaid subsequent development and the facts and circumstances of the case, so far as this petition is concerned, in view of the aforesaid decisions of the Division Bench of this Court the impugned order Annexure-A is hereby quashed and set aside and to that extent this petition is allowed. Rule is made absolute to aforesaid extent, with no order as to

costs.

(K.M. Mehta, J.)

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